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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,828	08/31/2001	Brian Anthony Cox	GIL.P.US0016	4331

7590

09/22/2004

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EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,828

Applicant(s)

COX, BRIAN ANTHONY

Examiner

Stephen A Vu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 12-16 is/are rejected.
- 7) ☒ Claim(s) 4-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-3, 12, 14, and 16 stand rejected under 35 U.S.C. 102(e) as being anticipated by Taormino et al.

Taormino et al show a pedal-operated machine comprising a saddle (11) having a seat portion with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see col. 3, lines 23-27). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion.

With claim 2, the effective axis of rocking motion of the seat portion extends substantially horizontally.

With claim 3, the mounting arrangement has a mounting bracket (19) to permit the mounting of the saddle on the machine.

With claim 12, the mounting arrangement includes two links (15) each connected at their upper ends to the seat portion and at their lower ends to the mounting bracket (19).

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With claim 14, the seat portion is resiliently biased to a central portion and moves against the bias when performing a rocking motion.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 12-14, and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Nord.

Nord shows a pedal-operated machine comprising a saddle having a seat portion (a) with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see figure 1). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion.

With claim 2, the effective axis of the rocking motion of the seat portion extends substantially horizontally.

With claim 3, the mounting arrangement has a mounting bracket (m) to permit the mounting of the saddle on the machine.

With claim 12, the mounting arrangement includes two links (h) each connected at their upper ends to the seat portion and at their lower ends to the mounting bracket.

With claim 13, the links (h) are resiliently deformable and the lowered ends are clamped to the mounting bracket.

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With claim 14, the seat portion is resiliently biased to a central portion and moves against the bias when performing a rocking motion.

Claims 1-3,12-14, and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rouw.

Rouw shows a pedal-operated machine comprising a saddle (11) having a seat portion (17) with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see figure 5). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion.

With claim 2, the effective axis of the rocking motion of the seat portion extends substantially horizontally.

With claim 3, the mounting arrangement has a mounting bracket (28) to permit the mounting of the saddle on the machine.

With claim 12, the mounting arrangement includes two links (31) each connected at their upper ends to the seat portion and at their lower ends to the mounting bracket.

With claim 13, the links (31) are resiliently deformable and the lowered ends are clamped to the mounting bracket.

With claim 14, the seat portion is resiliently biased to a central portion and moves against the bias when performing a rocking motion.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Taormino et al.

Taormino et al disclose the claimed invention except for the radius of curvature of the rocking motion to be in the range of 175 to 250 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify the radius of curvature of the rocking motion to be in the range of 175 to 250 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Nord.

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Nord discloses the claimed invention except for the radius of curvature of the rocking motion to be in the range of 175 to 250 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify the radius of curvature of the rocking motion to be in the range of 175 to 250 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Rouw.

Rouw discloses the claimed invention except for the radius of curvature of the rocking motion to be in the range of 175 to 250 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify the radius of curvature of the rocking motion to be in the range of 175 to 250 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

Claims 4-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed June 14, 2004 have been fully considered but they are not persuasive. The applicant has argued that the prior art do not teach the applicant's claimed invention. The examiner disagrees with this argument. It is best understood that Taormino et al show a pedal-operated machine comprising a saddle (11) having a seat portion with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see col. 3, lines 23-27). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion. Nord shows a pedal-operated machine comprising a saddle having a seat portion (a) with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see figure 1). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion. Rouw shows a pedal-operated machine comprising a saddle (11) having a seat portion (17) with an upper surface and a mounting arrangement below the seat portion, wherein the mounting arrangement permits the seat portion to perform a lateral rocking motion (see figure 5). The lateral rocking motion has an effective axis disposed above the upper surface of the seat portion.

Conclusion

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Stephen Vu
September 18, 2004


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600